

include (i) specific daily usage, including both Local Traffic (if and where applicable) and LEC-carried IntraLATA Toll Traffic, in EMI format for usage sensitive services furnished in connection with each Resale Service and Network Element to the extent that similar usage sensitive information is provided to retail End Users of SBC-13STATE within that state, (ii) with sufficient detail to enable CLEC to bill its End Users for usage sensitive services furnished by SBC-13STATE in connection with Resale Services and Network Elements provided by SBC-13STATE. Procedures and processes for implementing the interfaces with SBC-AMERITECH, PACIFIC, NEVADA, SNET, and SBC-SWBT will be included in implementation requirements documentation.

- 8.10.2 To establish file transmission for the Daily Usage File, CLEC must provide a separate written request for each state to SBC-AMERITECH, PACIFIC, NEVADA, SNET and SBC-SWBT no less than sixty (60) calendar days prior to the desired first transmission date for each file.
- 8.10.3 Call detail for LEC-carried calls that are alternately billed to CLEC End Users lines provided by SBC-AMERITECH, SBC-SWBT and SNET through Resale or Network Elements will be forwarded to CLEC as rated call detail on the DUF. Unless otherwise specified in Appendix Message Exchange, call detail for LEC-carried calls that are alternately billed to CLEC End User lines provided by PACIFIC or NEVADA through Resale or Network Elements will be forwarded to CLEC as rated call detail on the DUF.
- 8.10.4 SBC-SWBT will bill CLEC for Usage Extract furnished by SBC-SWBT in accordance with the price(s) provided in the applicable Appendix Pricing under "Electronic Billing Information."
- 8.10.5 Interexchange call detail on Resale Services or Network Elements (ports) that is forwarded to SBC-13STATE for billing, which would otherwise be processed by SBC-13STATE for its retail End Users, will be returned to the IXC and will not be passed through to CLEC. This call detail will be returned to the IXC with a transaction code indicating that the returned call originated from a resold account. Billing for Information Services and other ancillary services traffic on Resale Services and Network Elements (ports) will be passed through when SBC-13STATE records the message.
- 8.10.6 SBC-AMERITECH, NEVADA and PACIFIC Ancillary Services messages originated on or billed to a Resale Service or Network Element (port) in those seven (7) states are subject to the rates, terms and conditions of Appendix MESSAGE EXCHANGE.

8.10.7 CLEC is responsible for providing all billing information to each of its End Users, regardless of the method used to provision the End User's service.

9. **NONPAYMENT AND PROCEDURES FOR DISCONNECTION**

9.1 If a Party is furnished Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services under the terms of this Agreement in more than one (1) state, Sections 9.1 through 9.7, inclusive, shall be applied separately for each such state.

9.2 Failure to pay charges shall be grounds for disconnection of Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement. If a Party fails to pay any charges billed to it under this Agreement, including but not limited to any Late Payment Charges or miscellaneous charges ("**Unpaid Charges**"), and any portion of such Unpaid Charges remain unpaid after the Bill Due Date, the Billing Party will notify the Non-Paying Party in writing that in order to avoid disruption or disconnection of the Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products and services furnished under this Agreement, the Non-Paying Party must remit all Unpaid Charges to the Billing Party within ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges.

9.2.1 AM-IN will also provide any written notification to the Indiana Utility Regulatory Commission as required by rule 170 IAC 7-6.

9.2.2 SWBT-KAN will also provide any written notification to the Kansas Corporation Commission as required by Order Number 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

9.2.3 SWBT-MO will also provide any written notification to the Missouri Public Service Commission as required by Rule 4 CSR 240-32.120.

9.3 If the Non-Paying Party desires to dispute any portion of the Unpaid Charges, the Non-Paying Party must complete all of the following actions not later than ten (10) Business Days following receipt of the Billing Party's notice of Unpaid Charges:

9.3.1 notify the Billing Party in writing which portion(s) of the Unpaid Charges it disputes, including the total amount disputed ("**Disputed Amounts**") and the specific details listed in Section 10.4.1 of this Agreement, together with the reasons for its dispute; and

9.3.2 pay all undisputed Unpaid Charges to the Billing Party; and

9.3.3 pay all Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into an interest bearing escrow account that complies with the requirements set forth in Section 8.4; and

9.3.4 furnish written evidence to the Billing Party that the Non-Paying Party has established an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 and deposited a sum equal to the Disputed Amounts [other than disputed charges arising from Appendix Reciprocal Compensation] into that account. Until evidence that the full amount of the Disputed Charges [other than disputed charges arising from Appendix Reciprocal Compensation] has been deposited into an escrow account that complies with Section 8.4 is furnished to the Billing Party, such Unpaid Charges will not be deemed to be "disputed" under Section 10.

9.4 Issues related to Disputed Amounts shall be resolved in accordance with the procedures identified in the Dispute Resolution provision set forth in Section 10.

9.5 SBC-12STATE

9.5.1 If the Non-Paying Party fails to (a) pay any undisputed Unpaid Charges in response to the Billing Party's Section 9.2 notice, (b) deposit the disputed portion of any Unpaid Charges into an interest bearing escrow account that complies with all of the terms set forth in Section 8.4 within the time specified in Section 9.3, (c) timely furnish any assurance of payment requested in accordance with Section 7 or (d) make a payment in accordance with the terms of any mutually agreed payment arrangement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law, provide written demand to the Non-Paying Party for payment of any of the obligations set forth in (a) through (d) of this Section within ten (10) Business Days. On the day that the Billing Party provides such written demand to the Non-Paying Party, the Billing Party may also exercise any or all of the following options:

9.5.1.1 suspend acceptance of any application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and/or

9.5.1.2 suspend completion of any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement.

9.5.2 Notwithstanding anything to the contrary in this Agreement, the Billing Party's exercise of any of its options under Section 9.5.1, Section 9.5.1.1 and Section 9.5.1.2:

- 9.5.2.1 will not delay or relieve the Non-Paying Party's obligation to pay all charges on each and every invoice on or before the applicable Bill Due Date, and
- 9.5.2.2 will exclude any affected application, request, order or service from any otherwise applicable performance interval, Performance Benchmark or Performance Measure.

9.6 SBC-AMERITECH only

- 9.6.1 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,
 - 9.6.1.1 cancel any pending application, request or order from the Non-Paying Party for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and
 - 9.6.1.2 discontinue providing any Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services furnished under this Agreement.
 - 9.6.1.2.1 Notwithstanding any inconsistent provisions in this Agreement, discontinuance of service by AM-IN will comply with Indiana Utility Regulatory Commission rule 170 IAC 7-6.
 - 9.6.1.2.2 The Billing Party has no liability to the Non-Paying Party or its End Users in the event of discontinuance of service.
 - 9.6.1.2.3 Additional charges may become applicable under the terms of this Agreement following discontinuance of service.

9.7 SBC-7STATE only

- 9.7.1 Any demand provided by SBC-7STATE to CLEC under Section 9.5.1 will further specify that upon disconnection of CLEC, SBC-7STATE will cause CLEC's End Users that are provisioned through Resale Services to be transferred to SBC-7STATE local service.
 - 9.7.1.1 be provided to the Commission.

- 9.7.2 If the Non-Paying Party fails to pay the Billing Party on or before the date specified in the demand provided under Section 9.5.1 of this Agreement, the Billing Party may, in addition to exercising any other rights or remedies it may have under Applicable Law,
- 9.7.2.1 cancel any pending application, request or order for new or additional Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services under this Agreement; and
 - 9.7.2.2 disconnect any Interconnection, Resale Services, Network Elements, Collocation, functions, facilities, products or services furnished under this Agreement.
 - 9.7.2.2.1 Notwithstanding any inconsistent provisions in this Agreement, disconnection of service by SWBT-KAN will comply with Kansas Corporation Commission Order Number 5 (dated March 25, 2002) in Docket 01-GMT-649-GIT.
- 9.7.3 On the same date that Resale Services to CLEC are disconnected, SBC-7STATE will transfer CLEC's End Users provisioned through Resale Services to SBC-7STATE's local service. To the extent available at retail from SBC-7STATE, the Resale End Users transferred to SBC-7STATE's local service will receive the same services that were provided through CLEC immediately prior to the time of transfer; provided, however, SBC-7STATE reserves the right to toll restrict (both interLATA and intraLATA) such transferred End Users.
- 9.7.3.1 Notwithstanding any inconsistent provisions in this Agreement, the transfer of Resale End Users to SWBT-MO will comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.
 - 9.7.3.2 SBC-7STATE will inform the Commission of the names of all Resale End Users transferred through this process.
 - 9.7.3.3 Conversion charges and service establishment charges for transferring Resale End Users to SBC-7STATE as specified in Section 9.7.3 will be billed to CLEC.
 - 9.7.3.4 The Billing Party has no liability to the Non-Paying Party or its End Users in the event of disconnection of service in compliance with Section 9.7.2. SBC-7STATE has no liability to CLEC or CLEC's End Users in the event of disconnection of service to CLEC and the

transfer of any Resale End Users to SBC-7STATE local service in connection with such disconnection.

9.7.4 Within five (5) calendar days following the transfer, SBC-7STATE will notify each transferred Resale End User that because of CLEC's failure to pay SBC-7STATE, the End User's local service is now being provided by SBC-7STATE. This notice will also advise each transferred Resale End User that the End User has thirty (30) calendar days from the date of transfer to select a new Local Service Provider.

9.7.4.1 Notwithstanding any inconsistent provisions in this Agreement, notice of transfer to Missouri Resale End Users will comply with Missouri Public Service Commission Rule 4 CSR 240-32.120.

9.7.4.1.1 Notwithstanding any inconsistent provisions in this Agreement, notice of transfer to Kansas Resale End Users will comply with Kansas Corporation Commission Order No. 5 (dated March 25, 2002) in Docket 01-GIMT-649-GIT.

9.7.5 The transferred Resale End User shall be responsible for any and all charges incurred during the selection period other than those billed to CLEC under Section 9.7.3.3.

9.7.6 If any Resale End User transferred to SBC-7STATE's local service under Section 9.7.3 of this Agreement fails to select a new Local Service Provider within thirty (30) calendar days of the transfer, SBC-7STATE may terminate the transferred Resale End User's service.

9.7.6.1 SBC-7STATE will notify the Commission of the names of all transferred Resale End Users whose local service was terminated pursuant to Section 9.7.5.

9.7.6.2 Nothing in this Agreement shall be interpreted to obligate SBC-7STATE to continue to provide local service to any transferred Resale End User beyond the thirty (30) calendar day selection period. Nothing herein shall be interpreted to limit any and all disconnection rights SBC-7STATE has with regard to such transferred Resale End Users under Applicable Law; provided, however,

9.7.6.2.1 in PACIFIC only, following expiration of the selection period and disconnection of such transferred Resale End Users, where facilities permit, PACIFIC will furnish

transferred and subsequently disconnected local residential
End Users with "quick dial tone."

9.8 SNET only

9.8.1 For nonpayment and procedures for disconnection for SNET, see the
applicable DPUC ordered tariff.

10. DISPUTE RESOLUTION

10.1 Finality of Disputes

10.1.1 Except as otherwise specifically provided for in this Agreement, no claim
may be brought for any dispute arising from this Agreement more than
twenty-four (24) months from the date the occurrence which gives rise to the
dispute is discovered or reasonably should have been discovered with the
exercise of due care and attention.

10.1.2 Notwithstanding anything contained in this Agreement to the contrary, a
Party shall be entitled to dispute only those charges for which the Bill Due
Date occurred within the twelve (12) months immediately preceding the date
on which the other Party received notice of such Disputed Amounts.

10.2 Alternative to Litigation

10.2.1 The Parties desire to resolve disputes arising out of this Agreement without
litigation. Accordingly, the Parties agree to use the following Dispute
Resolution procedures with respect to any controversy or claim arising out of
or relating to this Agreement or its breach.

10.3 Commencing Dispute Resolution

10.3.1 Dispute Resolution shall commence upon one Party's receipt of written
notice of a controversy or claim arising out of or relating to this Agreement
or its breach. No Party may pursue any claim unless such written notice has
first been given to the other Party. There are three (3) separate Dispute
Resolution methods:

10.3.1.1 Service Center (SBC-AMERITECH), LSC (SBC-7STATE) or
LEC-C (SNET);

10.3.1.2 Informal Dispute Resolution; and

10.3.1.3 Formal Dispute Resolution, each of which is described below.

- 10.4 LSC/ Service Center/LEC-C Dispute Resolution -the following Dispute Resolution procedures will apply with respect to any billing dispute arising out of or relating to the Agreement.
- 10.4.1 If the written notice given pursuant to Section 10.3 discloses that a CLEC dispute relates to billing, then the procedures set forth in this Section 10.4 shall be used and the dispute shall first be referred to the appropriate service center [SBC-AMERITECH Service Center; SBC-7STATE Local Service Center (LSC); SNET Local Exchange Carrier Center (LEC-C)] for resolution. In order to resolve a billing dispute, CLEC shall furnish SBC-13STATE written notice of (i) the date of the bill in question, (ii) CBA/ESBA/ASBS or BAN number of the bill in question, (iii) telephone number, circuit ID number or trunk number in question, (iv) any USOC information relating to the item questioned, (v) amount billed and (vi) amount in question and (vii) the reason that CLEC disputes the billed amount. To be deemed a "dispute" under this Section 10.4, CLEC must provide evidence that it has either paid the disputed amount or established an interest bearing escrow account that complies with the requirements set forth in Section 8.4 of this Agreement and deposited all Unpaid Charges relating to Resale Services and Network Elements into that escrow account. Failure to provide the information and evidence required by this Section 10.4.1 not later than twenty-nine (29) calendar days following the Bill Due Date shall constitute CLEC's irrevocable and full waiver of its right to dispute the subject charges.
- 10.4.2 The Parties shall attempt to resolve Disputed Amounts appearing on SBC-13STATE's current billing statements thirty (30) to sixty (60) calendar days from the Bill Due Date (provided the CLEC furnishes all requisite information and evidence under Section 10.4.1 by the Bill Due Date). If not resolved within thirty (30) calendar days, upon request, SBC-13STATE will notify CLEC of the status of the dispute and the expected resolution date.
- 10.4.3 The Parties shall attempt to resolve Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days from the date notice of the Disputed Amounts was received (provided that CLEC furnishes all requisite information and evidence under Section 10.4.1), SBC-13STATE will notify CLEC of the status of the dispute and the expected resolution date.
- 10.4.4 Any notice of Disputed Amounts given by SBC-13STATE to CLEC pursuant to Section 10.3 shall furnish CLEC written notice of: (i) the date of the bill in question, (ii) the account number or other identification of the bill in question, (iii) any telephone number, circuit ID number or trunk number in

question, (iv) any USOC (or other descriptive information) questioned, (v) the amount billed, (vi) the amount in question, and (vii) the reason that SBC-13STATE disputes the billed amount. The Parties shall attempt to resolve Disputed Amounts appearing on current billing statement(s) thirty (30) to sixty (60) calendar days from the Bill Due Date (provided SBC-13STATE furnishes all requisite information by the Bill Due Date) and Disputed Amounts appearing on statements prior to the current billing statement within thirty (30) to ninety (90) calendar days, but resolution may take longer depending on the complexity of the dispute. If not resolved within thirty (30) calendar days, CLEC will notify SBC-13STATE of the status of the dispute and the expected resolution date.

10.4.5 If the Non-Paying Party is not satisfied by the resolution of the billing dispute under this Section 10.4, the Non-Paying Party may notify the Billing Party in writing that it wishes to invoke the Informal Resolution of Disputes afforded pursuant to Section 10.5 of this Agreement.

10.5 Informal Resolution of Disputes

10.5.1 Upon receipt by one Party of notice of a dispute by the other Party pursuant to Section 10.3 or Section 10.4.5, each Party will appoint a knowledgeable, responsible representative to meet and negotiate in good faith to resolve any dispute arising under this Agreement. The location, form, frequency, duration, and conclusion of these discussions will be left to the discretion of the representatives. Upon agreement, the representatives may utilize other alternative Dispute Resolution procedures such as mediation to assist in the negotiations. Discussions and the correspondence among the representatives for purposes of settlement are exempt from discovery and production and will not be admissible in the arbitration described below or in any lawsuit without the concurrence of both Parties. Documents identified in or provided with such communications that were not prepared for purposes of the negotiations are not so exempted, and, if otherwise admissible, may be admitted in evidence in the arbitration or lawsuit.

10.6 Formal Dispute Resolution

10.6.1 If the Parties are unable to resolve the dispute through the informal procedure described in Section 10.5, then either Party may invoke the formal Dispute Resolution procedures described in this Section 10.6. Unless agreed among all Parties, formal Dispute Resolution procedures, including arbitration or other procedures as appropriate, may be invoked not earlier than sixty (60) calendar days after receipt of the letter initiating Dispute Resolution under Section 10.3.

106.2 Claims Subject to Mandatory Arbitration. The following claims, if not settled through informal Dispute Resolution, will be subject to mandatory arbitration pursuant to Section 10.7 below:

10.6.2.1 Each unresolved billing dispute involving one percent (1%) or less of the amounts charged to the Disputing Party under this Agreement in the state in which the dispute arises during the twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 10.3. If the disputing Party has not been billed for a minimum of twelve (12) months immediately preceding receipt of the letter initiating Dispute Resolution under Section 10.3, the Parties will annualize the actual number of months billed.

10.6.3 Claims Subject to Elective Arbitration. Claims will be subject to elective arbitration pursuant to Section 10.7 if, and only if, the claim is not settled through informal Dispute Resolution and both Parties agree to arbitration. If both Parties do not agree to arbitration, then either Party may proceed with any remedy available to it pursuant to law, equity or agency mechanism.

10.6.4 Claims Not Subject to Arbitration. If the following claims are not resolved through informal Dispute Resolution, they will not be subject to arbitration and must be resolved through any remedy available to a Party pursuant to law, equity or agency mechanism.

10.6.4.1 Actions seeking a temporary restraining order or an injunction related to the purposes of this Agreement.

10.6.4.2 Actions to compel compliance with the Dispute Resolution process.

10.6.4.3 All claims arising under federal or state statute(s), including antitrust claims.

10.7 Arbitration

10.7.1 Disputes subject to mandatory or elective arbitration under the provisions of this Agreement will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The arbitrator shall be knowledgeable of telecommunications issues. Each arbitration will be held in Dallas, Texas (SBC-SWBT); Chicago, Illinois (SBC-AMERITECH); San Francisco, California (PACIFIC); Reno, Nevada (NEVADA); or New Haven, Connecticut (SNET), as appropriate, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the

demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The Federal Arbitration Act, 9 U.S.C. Secs. 1-16, not state law, shall govern the arbitrability of all disputes. The arbitrator will have no authority to award punitive damages, exemplary damages, Consequential Damages, multiple damages, or any other damages not measured by the prevailing Party's actual damages, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Agreement. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures, including attorneys' fees. The Parties will equally split the fees of the arbitration and the arbitrator. The arbitrator's award shall be final and binding and may be entered in any court having jurisdiction thereof. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

11. AUDITS – Applicable in SBC-12STATE only

11.1 Subject to the restrictions set forth in Section 20 and except as may be otherwise expressly provided in this Agreement, a Party (the “**Auditing Party**”) may audit the other Party's (the “**Audited Party**”) books, records, data and other documents, as provided herein, once annually, with the audit period commencing not earlier than the date on which services were first supplied under this Agreement (“**service start date**”) for the purpose of evaluating (i) the accuracy of Audited Party's billing and invoicing of the services provided hereunder and (ii) verification of compliance with any provision of this Agreement that affects the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Notwithstanding the foregoing, an Auditing Party may audit the Audited Party's books, records and documents more than once annually if the previous audit found (i) previously uncorrected net variances or errors in invoices in Audited Party's favor with an aggregate value of at least five percent (5%) of the amounts payable by Auditing Party for audited services provided during the period covered by the audit or (ii) non-compliance by Audited Party with any provision of this Agreement affecting Auditing Party's billing and invoicing of the services provided to Audited Party with an aggregate value of at least five percent (5%) of the amounts payable by Audited Party for audited services provided during the period covered by the audit.

11.1.1 The scope of the audit shall be limited to the period which is the shorter of (i) the period subsequent to the last day of the period covered by the audit which was last performed (or if no audit has been performed, the service start date and (ii) the twelve (12) month period immediately preceding the date the Audited Party received notice of such requested audit, but in any event not

prior to the service start date. Such audit shall begin no fewer than thirty (30) calendar days after Audited Party receives a written notice requesting an audit and shall be completed no later than thirty (30) calendar days after the start of such audit.

- 11.1.2 Such audit shall be conducted either by the Auditing Party's employee(s) or an independent auditor acceptable to both Parties; provided, however, if the Audited Party requests that an independent auditor be engaged and the Auditing Party agrees, the Audited Party shall pay one-quarter (1/4) of the independent auditor's fees and expenses. If an independent auditor is to be engaged, the Parties shall select an auditor by the thirtieth day following Audited Party's receipt of a written audit notice. Auditing Party shall cause the independent auditor to execute a nondisclosure agreement in a form agreed upon by the Parties.
- 11.1.3 Each audit shall be conducted on the premises of the Audited Party during normal business hours. Audited Party shall cooperate fully in any such audit and shall provide the auditor reasonable access to any and all appropriate Audited Party employees and any books, records and other documents reasonably necessary to assess (i) the accuracy of Audited Party's bills and (ii) Audited Party's compliance with the provisions of this Agreement that affect the accuracy of Auditing Party's billing and invoicing of the services provided to Audited Party hereunder. Audited Party may redact from the books, records and other documents provided to the auditor any Audited Party Proprietary Information that reveals the identity of End Users of Audited Party.
- 11.1.4 Each Party shall maintain reports, records and data relevant to the billing of any services that are the subject matter of this Agreement for a period of not less than twenty-four (24) months after creation thereof, unless a longer period is required by Applicable Law.
- 11.1.5 If any audit confirms any undercharge or overcharge, then Audited Party shall (i) promptly correct any billing error, including making refund of any overpayment by Auditing Party in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results and (ii) for any undercharge caused by the actions of the Audited Party, immediately compensate Auditing Party for such undercharge, and (iii) in each case, calculate and pay interest as provided in Section 8.1 (depending on the SBC-owned ILEC(s) involved), for the number of calendar days from the date on which such undercharge or overcharge originated until the date on which such credit is issued or payment is made and available.
- 11.1.6 Except as may be otherwise provided in this Agreement, audits shall be performed at Auditing Party's expense, subject to reimbursement by Audited

Party of one-quarter (1/4) of any independent auditor's fees and expenses in the event that an audit finds, and the Parties subsequently verify, a net adjustment in the charges paid or payable by Auditing Party hereunder by an amount that is, on an annualized basis, greater than five percent (5%) of the aggregate charges for the audited services during the period covered by the audit.

11.1.7 Any disputes concerning audit results shall be referred to the Parties' respective personnel responsible for informal resolution. If these individuals cannot resolve the dispute within thirty (30) calendar days of the referral, either Party may request in writing that an additional audit shall be conducted by an independent auditor acceptable to both Parties, subject to the requirements set out in Section 11.1. Any additional audit shall be at the requesting Party's expense.

11.2 Audits - SNET only

11.2.1 Except as provided in Appendix Compensation, SNET shall arrange for one (1) annual independent audit to be conducted by a "Big Six" independent public accounting firm or an accounting firm mutually agreed to by SNET, CLEC and all other CLECs doing business with SNET under the terms of an agreement adopted pursuant to Sections 251 and 252 of the Act for the purpose of evaluating the accuracy of SNET's billing and invoicing.

11.2.2 SNET will cooperate fully with the independent auditor in such audit and provide reasonable access to any and all appropriate SNET employees, books, records and other documents reasonably necessary to perform the audit.

11.2.3 SNET shall promptly correct any billing error that is revealed in the audit, including making refund of any overpayment to CLEC in the form of a credit on the invoice for the first full billing cycle after the audit report is issued; such refund shall include interest on the overpayment at the rate of eight percent (8%) per year. In the event that the audit reveals any underbilling and resulting underpayment to SNET by CLEC, the underpayment shall be reflected in CLEC's invoice for the first full billing cycle after the audit report is issued. SNET will not be entitled to recover interest on any underbilling to CLEC revealed by the audit for the time preceding the amount appearing on CLEC's bill from SNET, however, SNET shall be entitled to recover interest at the interest rate referenced in Section 8.1.5.1 on such underbilling and CLEC shall pay interest for the number of calendar days from the Bill Due Date of the bill on which such underbilling was rectified until the date on which payment is made and available to SNET.

12. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

- 12.1 EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NO PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTERCONNECTION, RESALE SERVICES, NETWORK ELEMENTS, FUNCTIONS, FACILITIES, PRODUCTS AND SERVICES IT PROVIDES UNDER OR IS CONTEMPLATED TO PROVIDE UNDER THIS AGREEMENT AND EACH PARTY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR OF FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, NO PARTY TO THIS AGREEMENT ASSUMES RESPONSIBILITY WITH REGARD TO THE CORRECTNESS OF DATA OR INFORMATION SUPPLIED BY ANY OTHER PARTY TO THIS AGREEMENT WHEN SUCH DATA OR INFORMATION IS ACCESSED AND USED BY A THIRD PARTY.

13. LIMITATION OF LIABILITY

- 13.1 Except for indemnity obligations expressly set forth herein or as otherwise expressly provided in specific appendices, each Party's liability to the other Party for any Loss relating to or arising out of such Party's performance under this Agreement, including any negligent act or omission (whether willful or inadvertent), whether in contract, tort or otherwise, including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement also constitute a violation of a statute, including the Act, shall not exceed in total the amount SBC-13STATE or CLEC has charged or would have charged to the other Party for the affected Interconnection, Resale Services, Network Elements, functions, facilities, products and service(s) that were not performed or were improperly performed.
- 13.2 Except as otherwise expressly provided in specific appendices, in the case of any Loss alleged or claimed by a Third Party to have arisen out of the negligence or willful misconduct of any Party, each Party shall bear, and its obligation shall be limited to, that portion (as mutually agreed to by the Parties or as otherwise established) of the resulting expense caused by its own negligence or willful misconduct or that of its agents, servants, contractors, or others acting in aid or concert with it.
- 13.3 A Party may, in its sole discretion, provide in its tariffs and contracts with its End Users or Third Parties that relate to any Interconnection, Resale Services, Network Elements, functions, facilities, products and services provided or contemplated under this Agreement that, to the maximum extent permitted by Applicable Law, such Party shall not be liable to such End User or Third Party for (i) any Loss relating to or arising out of this Agreement, whether in contract, tort or otherwise, that exceeds the amount such Party would have charged the End User or Third Party for the Interconnection, Resale Services, Network Elements, functions, facilities, products

and services that gave rise to such Loss and (ii) any Consequential Damages. If a Party elects not to place in its tariffs or contracts such limitation(s) of liability, and the other Party incurs a Loss as a result thereof, the first Party shall indemnify and reimburse the other Party for that portion of the Loss that would have been limited had the first Party included in its tariffs and contracts the limitation(s) of liability described in this Section 13.3.

- 13.4 Neither CLEC nor SBC-13STATE shall be liable to the other Party for any Consequential Damages suffered by the other Party, regardless of the form of action, whether in contract, warranty, strict liability, tort or otherwise, including negligence of any kind, whether active or passive (and including alleged breaches of this Agreement and causes of action alleged to arise from allegations that breach of this Agreement constitutes a violation of the Act or other statute), and regardless of whether the Parties knew or had been advised of the possibility that such damages could result in connection with or arising from anything said, omitted, or done hereunder or related hereto, including willful acts or omissions; provided that the foregoing shall not limit a Party's obligation under Section 14 to indemnify, defend, and hold the other Party harmless against any amounts payable to a Third Party, including any Losses, and Consequential Damages of such Third Party; provided, however, that nothing in this Section 13.4 shall impose indemnity obligations on a Party for any Loss or Consequential Damages suffered by that Party's End User in connection with any affected Interconnection, Resale Services, Network Elements, functions, facilities, products and services. Except as provided in the prior sentence, each Party ("Indemnifying Party") hereby releases and holds harmless the other Party ("Indemnitee") (and Indemnitee's Affiliates, and its respective officers, directors, employees and agents) against any Loss or Claim made by the Indemnifying Party's End User.
- 13.5 SBC-13STATE shall not be liable for damages to an End User's premises resulting from the furnishing of any Interconnection, Resale Services, Network Elements, functions, facilities, products or services, including, if applicable, the installation and removal of equipment and associated wiring, unless the damage is caused by SBC-13STATE's gross negligence or willful misconduct. SBC-13STATE does not guarantee or make any warranty with respect to Interconnection, Resale Services, Network Elements, functions, facilities, products or services when used in an explosive atmosphere.
- 13.6 CLEC hereby releases SBC-13STATE from any and all liability for damages due to errors or omissions in CLEC's End User listing information as provided by CLEC to SBC-13STATE under this Agreement, including any errors or omissions occurring in CLEC's End User listing information as it appears in the White Pages directory, including, but not limited to, special, indirect, Consequential, punitive or incidental damages.

- 13.7 SBC-13 STATE shall not be liable to CLEC, its End User or any other Person for any Loss alleged to arise out of the provision of access to 911 service or any errors, interruptions, defects, failures or malfunctions of 911 service.
- 13.8 This Section 13 is not intended to exempt any Party from all liability under this Agreement, but only to set forth the scope of liability agreed to and the type of damages that are recoverable. Both Parties acknowledge that they negotiated regarding alternate limitation of liability provisions but that such provisions would have altered the cost, and thus the price, of providing the Interconnection, Resale Services, Network Elements, functions, facilities, products and services available hereunder, and no different pricing reflecting different costs and different limits of liability was agreed to.

14. INDEMNITY

- 14.1 Except as otherwise expressly provided herein or in specific appendices, each Party shall be responsible only for the Interconnection, Resale Services, Network Elements, functions, facilities, products and services which are provided by that Party, its authorized agents, subcontractors, or others retained by such Parties, and neither Party shall bear any responsibility for the Interconnection, Resale Services, Network Elements, functions, facilities, products and services provided by the other Party, its agents, subcontractors, or others retained by such Parties.
- 14.2 Except as otherwise expressly provided herein or in specific appendices, and to the extent not prohibited by Applicable Law and not otherwise controlled by tariff, each Party (the "Indemnifying Party") shall release, defend and indemnify the other Party (the "Indemnified Party") and hold such Indemnified Party harmless against any Loss to a Third Party arising out of the negligence or willful misconduct ("Fault") of such Indemnifying Party, its agents, its End Users, contractors, or others retained by such Parties, in connection with the Indemnifying Party's provision of Interconnection, Resale Services, Network Elements, functions, facilities, products and services under this Agreement; provided, however, that (i) with respect to employees or agents of the Indemnifying Party, such Fault occurs while performing within the scope of their employment, (ii) with respect to subcontractors of the Indemnifying Party, such Fault occurs in the course of performing duties of the subcontractor under its subcontract with the Indemnifying Party, and (iii) with respect to the Fault of employees or agents of such subcontractor, such Fault occurs while performing within the scope of their employment by the subcontractor with respect to such duties of the subcontractor under the subcontract.
- 14.3 In the case of any Loss alleged or claimed by a End User of either Party, the Party whose End User alleged or claimed such Loss (the "Indemnifying Party") shall defend and indemnify the other Party (the "Indemnified Party") against any and all such Claims or Losses by its End User regardless of whether the underlying Interconnection, Resale Service, Network Element, function, facility, product or

service giving rise to such Claim or Loss was provided or provisioned by the Indemnified Party, unless the Claim or Loss was caused by the gross negligence or willful misconduct of the Indemnified Party.

- 14.4 A Party (the "**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party ("**Indemnified Party**") against any Claim or Loss arising from the Indemnifying Party's use of Interconnection, Resale Services, Network Elements, functions, facilities, products and services provided under this Agreement involving:

- 14.4.1 Any Claim or Loss arising from such Indemnifying Party's use of Interconnection, Resale Services, Network Elements, functions, facilities, products and services offered under this Agreement, involving any Claim for libel, slander, invasion of privacy, or infringement of Intellectual Property rights arising from the Indemnifying Party's or its End User's use.

- 14.4.1.1 The foregoing includes any Claims or Losses arising from disclosure of any End User-specific information associated with either the originating or terminating numbers used to provision Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided hereunder and all other Claims arising out of any act or omission of the End User in the course of using any Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided pursuant to this Agreement.

- 14.4.1.2 The foregoing includes any Losses arising from Claims for actual or alleged infringement of any Intellectual Property right of a Third Party to the extent that such Loss arises from an Indemnifying Party's or an Indemnifying Party's End User's use of Interconnection, Resale Services, Network Elements, functions, facilities, products or services provided under this Agreement; provided, however, that an Indemnifying Party's obligation to defend and indemnify the Indemnified Party shall not apply:

- 14.4.1.2.1 where an Indemnified Party or its End User modifies Interconnection, Resale Services, Network Elements, functions, facilities, products or services; provided under this Agreement; and

- 49.2.1.1.1 no infringement would have occurred without such modification.

- 14.4.2 Any and all penalties imposed on either Party because of the Indemnifying Party's failure to comply with the Communications Assistance to Law Enforcement Act of 1994 (CALEA); provided that the Indemnifying Party

shall also, at its sole cost and expense, pay any amounts necessary to modify or replace any equipment, facilities or services provided to the Indemnified Party under this Agreement to ensure that such equipment, facilities and services fully comply with CALEA.

- 14.5 CLEC acknowledges that its right under this Agreement to Interconnect with SBC-13STATE's network and to unbundle and/or combine SBC-13STATE's Network Elements (including combining with CLEC's Network Elements) may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of Third Parties.

- 14.5.1 The Parties acknowledge that on April 27, 2000, the FCC released its Memorandum Opinion and Order in CC Docket No. 96-98 (File No. CCBPol. 97-4), In the Matter of Petition of MCI *for Declaratory Ruling*. The Parties further acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decision and any remand thereof, including its right to seek legal review or a stay pending appeal of such decision.

- 14.5.1.1 SBC-13STATE agrees to use its best efforts to obtain for CLEC, under commercially reasonable terms, Intellectual Property rights to each unbundled network element necessary for CLEC to use such unbundled network element in the same manner as SBC-13STATE.

- 14.5.1.2 SBC-13STATE shall have no obligation to attempt to obtain for CLEC any Intellectual Property right(s) that would permit CLEC to use any unbundled network element in a different manner than used by SBC-13STATE.

- 14.5.1.3 To the extent not prohibited by a contract with the vendor of the network element sought by CLEC that contains Intellectual Property licenses, SBC-13STATE shall reveal to CLEC the name of the vendor, the Intellectual Property rights licensed to SBC-13STATE under the vendor contract and the terms of the contract (excluding cost terms). SBC-13STATE shall, at CLEC's request, contact the vendor to attempt to obtain permission to reveal additional contract details to CLEC.

- 14.5.1.4 All costs associated with the extension of Intellectual Property rights to CLEC pursuant to Section 14.5.1.1, including the cost of the license extension itself and the costs associated with the effort to obtain the license, shall be a part of the cost of providing the unbundled network element to which the Intellectual Property

rights relate and apportioned to all requesting carriers using that unbundled network element including SBC-13STATE.

- 14.5.2 SBC-13STATE hereby conveys no licenses to use such Intellectual Property rights and makes no warranties, express or implied, concerning CLEC's (or any Third Parties') rights with respect to such Intellectual Property rights and contract rights, including whether such rights will be violated by such Interconnection or unbundling and/or combining of Network Elements (including combining with CLEC's Network Elements) in SBC-13STATE's network or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any licenses or warranties for Intellectual Property rights associated with unbundled network elements are vendor licenses and warranties and are a part of the Intellectual Property rights SBC-13STATE agrees in Section 14.5.1.1 to use its best efforts to obtain.
- 14.5.3 SBC-13STATE does not and shall not indemnify, defend or hold CLEC harmless, nor be responsible for indemnifying or defending, or holding CLEC harmless, for any Claims or Losses for actual or alleged infringement of any Intellectual Property right or interference with or violation of any contract right that arises out of, is caused by, or relates to CLEC's Interconnection with SBC-13STATE's network and unbundling and/or combining SBC-13STATE's Network Elements (including combining with CLEC's Network Elements) or CLEC's use of other functions, facilities, products or services furnished under this Agreement. Any indemnities for Intellectual Property rights associated with unbundled network elements shall be vendor's indemnities and are a part of the Intellectual Property rights SWBT agrees in Section 14.5.1.1 to use its best efforts to obtain.
- 14.6 CLEC shall reimburse SBC-13STATE for damages to SBC-13STATE's facilities utilized to provide Interconnection or unbundled Network Elements hereunder caused by the negligence or willful act of CLEC, its agents or subcontractors or CLEC's End User or resulting from CLEC's improper use of SBC-13STATE's facilities, or due to malfunction of any facilities, functions, products, services or equipment provided by any person or entity other than SBC-13STATE. Upon reimbursement for damages, SBC-13STATE will cooperate with CLEC in prosecuting a claim against the person causing such damage. CLEC shall be subrogated to the right of recovery by SBC-13STATE for the damages to the extent of such payment.
- 14.7 Notwithstanding any other provision in this Agreement, each Party agrees that should it cause any non-standard digital subscriber line ("xDSL") technologies (as that term is defined in the applicable Appendix DSL and/or the applicable commission-ordered tariff, as appropriate) to be deployed or used in connection with or on SBC-13STATE facilities, that Party ("Indemnifying Party") will pay all costs associated with any damage, service interruption or other

Telecommunications Service degradation, or damage to the other Party's ("Indemnitee's") facilities.

14.8 Indemnification Procedures

- 14.8.1 Whenever a claim shall arise for indemnification under this Section 14, the relevant Indemnified Party, as appropriate, shall promptly notify the Indemnifying Party and request in writing the Indemnifying Party to defend the same. Failure to so notify the Indemnifying Party shall not relieve the Indemnifying Party of any liability that the Indemnifying Party might have, except to the extent that such failure prejudices the Indemnifying Party's ability to defend such claim.
- 14.8.2 The Indemnifying Party shall have the right to defend against such liability or assertion, in which event the Indemnifying Party shall give written notice to the Indemnified Party of acceptance of the defense of such claim and the identity of counsel selected by the Indemnifying Party.
- 14.8.3 Until such time as Indemnifying Party provides written notice of acceptance of the defense of such claim, the Indemnified Party shall defend such claim, at the expense of the Indemnifying Party, subject to any right of the Indemnifying Party to seek reimbursement for the costs of such defense in the event that it is determined that Indemnifying Party had no obligation to indemnify the Indemnified Party for such claim.
- 14.8.4 Upon accepting the defense, the Indemnifying Party shall have exclusive right to control and conduct the defense and settlement of any such claims, subject to consultation with the Indemnified Party. So long as the Indemnifying Party is controlling and conducting the defense, the Indemnifying Party shall not be liable for any settlement by the Indemnified Party unless such Indemnifying Party has approved such settlement in advance and agrees to be bound by the agreement incorporating such settlement.
- 14.8.5 At any time, an Indemnified Party shall have the right to refuse a compromise or settlement, and, at such refusing Party's cost, to take over such defense; provided that, in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the refusing Party against, any cost or liability in excess of such refused compromise or settlement.
- 14.8.6 With respect to any defense accepted by the Indemnifying Party, the Indemnified Party will be entitled to participate with the Indemnifying Party in such defense if the claim requests equitable relief or other relief that could affect the rights of the Indemnified Party, and shall also be entitled to employ separate counsel for such defense at such Indemnified Party's expense.

14.8.7 If the Indemnifying Party does not accept the defense of any indemnified claim as provided above, the Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party.

14.8.8 In the event of a failure to assume the defense, the Indemnified Party may negotiate a settlement, which shall be presented to the Indemnifying Party. If the Indemnifying Party refuses to agree to the presented settlement, the Indemnifying Party may take over the defense. If the Indemnifying Party refuses to agree to the presented settlement and refuses to take over the defense, the Indemnifying Party shall be liable for any reasonable cash settlement not involving any admission of liability by the Indemnifying Party, though such settlement may have been made by the Indemnified Party without approval of the Indemnifying Party, it being the Parties' intent that no settlement involving a non-monetary concession by the Indemnifying Party, including an admission of liability by such Party, shall take effect without the written approval of the Indemnifying Party.

14.8.9 Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Section 20.

15. PERFORMANCE MEASURES

15.1 Attachment Performance Measures provides monetary payments for failure to meet specified performance standards. The provisions of that Attachment constitute the sole obligation of SBC-13STATE to pay damages or financial penalties for failure to meet specified performance standards identified in such Attachment and all other Attachments to this Agreement.

16. INTELLECTUAL PROPERTY

16.1 Any Intellectual Property originating from or developed by a Party shall remain in the exclusive ownership of that Party.

17. NOTICES

17.1 Subject to Section 17.2, notices given by one Party to the other Party under this Agreement shall be in writing (unless specifically provided otherwise herein), and unless otherwise expressly required by this Agreement to be delivered to another representative or point of contact, shall be

17.1.1 delivered personally;

17.1.2 delivered by express overnight delivery service;

17.1.3 mailed, via certified mail or first class U.S. Postal Service, with postage prepaid, and a return receipt requested; or

17.1.4 delivered by facsimile; provided that a paper copy is also sent by a method described in (a), (b) or (c) of this Section 17.

17.1.5 Notices will be deemed given as of the earliest of:

17.1.5.1 the date of actual receipt,

17.1.5.2 the next Business Day when sent via express overnight delivery service,

17.1.5.3 five (5) calendar days after mailing in the case of first class or certified U.S. Postal Service, or

17.1.5.4 on the date set forth on the confirmation produced by the sending facsimile machine when delivered by facsimile prior to 5:00 p.m. in the recipient's time zone, but the next Business Day when delivered by facsimile at 5:00 p.m. or later in the recipient's time zone.

17.1.6 Notices will be addressed to the Parties as follows:

NOTICE CONTACT	CLEC CONTACT	<u>SBC-13STATE</u> CONTACT
NAME/TITLE	Debra A. Waller, Regulatory Assistant	Contract Administration ATTN: Notices Manager
STREET ADDRESS	4142 Melrose Ave. NW	311 S. Akard, 9 th Floor Four SBC Plaza
CITY, STATE, ZIP CODE	Roanoke, VA 24017	Dallas, TX 75202-5398
FACSIMILE NUMBER	540-444-2133	214-464-2006

17.1.7 Either Party may unilaterally change its designated contact, address, telephone number and/or facsimile number for the receipt of notices by giving written notice to the other Party in compliance with this Section. Any notice to change the designated contact, address, telephone and/or facsimile number for the receipt of notices shall be deemed effective ten (10) calendar days following receipt by the other Party.

17.2 SBC-13STATE communicates official information to CLECs via its Accessible Letter notification process. This process covers a variety of subjects, including updates on products/services promotions; deployment of new products/services; modifications and price changes to existing products/services; cancellation or retirement of existing products/services; and operational issues.

- 17.3 In the SBC-13STATES, Accessible Letter notification will be via electronic mail ("e-mail") distribution. Accessible Letter notification via e-mail will be deemed given as of the date set forth on the e-mail message.
- 17.4 In SBC-13STATE, CLEC may designate up to a maximum of ten (10) recipients for Accessible Letter notification via e-mail.
- 17.5 In SBC-13STATE, CLEC shall submit a completed Accessible Letter Recipient Change Request Form to the individual specified on that form to designate in writing each individual's e-mail address to whom CLEC requests Accessible Letter notification be sent. CLEC shall submit a completed Accessible Letter Recipient Change Request Form to add, remove or change recipient information for any CLEC recipient of Accessible Letters. Any completed Accessible Letter Recipient Change Request Form shall be deemed effective ten (10) calendar days following receipt by SBC-13STATE. SBC may, at its discretion, change the process by which the CLEC provides Accessible Letter recipient information. Changes to this process will be developed through the CLEC User Forum process and will be implemented only with the concurrence of the CLEC User Forum Global Issues group.
- 17.6 SBC-SWBT only:
- 17.6.1 SBC-SWBT shall provide a toll free facsimile number to CLEC for the submission of requests for Resale Services and Network Elements under this Agreement; CLEC shall provide SBC-SWBT with a toll free facsimile number for notices from SBC-SWBT relating to requests for Resale Services and Network Elements under this Agreement.

18. **PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS**

- 18.1 Neither Party nor its subcontractors or agents shall use in any advertising or sales promotion, press releases, or other publicity matters any endorsements, direct or indirect quotes, or pictures that imply endorsement by the other Party or any of its employees without such first Party's prior written approval. The Parties will submit to each other for written approval, prior to publication, all publicity matters that mention or display one another's name and/or marks or contain language from which a connection to said name and/or marks may be inferred or implied; the Party to whom a request is directed shall respond promptly. Nothing herein, however, shall be construed as preventing either Party from publicly stating the fact that it has executed this Agreement with the other Party.
- 18.2 Nothing in this Agreement shall grant, suggest, or imply any authority for one Party to use the name, trademarks, service marks, logos, proprietary trade dress or trade names of the other Party in any advertising, press releases, publicity matters, marketing and/or promotional materials or for any other commercial purpose without prior written approval from such other Party.

19. NO LICENSE

- 19.1 Except at otherwise expressly provided in this Agreement, no license under patents, copyrights or any other Intellectual Property right (other than the limited license to use consistent with the terms, conditions and restrictions of this Agreement) is granted by either Party or shall be implied or arise by estoppel with respect to any transactions contemplated under this Agreement.

20. CONFIDENTIALITY

- 20.1 Both Parties agree to treat Proprietary Information received from the other in accordance with the provisions of Section 222 of the Act.
- 20.2 Unless otherwise agreed, the obligations of confidentiality and non-use do not apply to such Proprietary Information that:
- 20.2.1 Was at the time of receipt, already known to the Receiving Party, free of any obligation to keep confidential and evidenced by written records prepared prior to delivery by the Disclosing Party; or
- 20.2.2 Is, or becomes publicly known through no wrongful act of the Receiving Party; or
- 20.2.3 Is rightfully received from a Third Party having no direct or indirect secrecy or confidentiality obligation to the Disclosing Party with respect to such information; provided that such Receiving Party has exercised commercially reasonable efforts to determine whether such Third Party has any such obligation; or
- 20.2.4 Is independently developed by an agent, employee representative or Affiliate of the Receiving Party and such Party is not involved in any manner with the provision of services pursuant to this Agreement and does not have any direct or indirect access to the Proprietary Information; or
- 20.2.5 Is disclosed to a Third Party by the Disclosing Party without similar restrictions on such Third Party's rights; or
- 20.2.6 Is approved for release by written authorization of the Disclosing Party, but only to the extent of the authorization granted; or
- 20.2.7 Is required to be made public or disclosed by the Receiving Party pursuant to Applicable Law or regulation or court order or lawful process.

21. INTERVENING LAW

- 21.1 This Agreement is entered into as a result of both private negotiations between the Parties and the incorporation of some of the results of arbitration by the Commissions. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. Without limiting the general applicability of the foregoing, the Parties acknowledge that on January 25, 1999, the United States Supreme Court issued its opinion in *AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999) (and on remand, *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. 2000)) and *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (1999) and on appeal to and remand by the United States Supreme Court, *Verizon v. FCC, et. al.*, 535 U.S. __ (2002). The Parties further acknowledge that on May 24, 2002, the United States District Court for the District of Columbia Circuit issued its decision in *United States Telecom Association, et. al v. FCC*, No. 00-101, in which the Court granted the petitions for review of the Federal Communications Commission's ("FCC") Third Report and Order and Fourth Further Notice of Proposed Rulemaking in CC Docket No. 96-98 (FCC 99-238) ("the UNE Remand Order") and the FCC's Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (FCC 99-355) (rel. December 9, 1999) ("the Line Sharing Order"), specifically vacated the Line Sharing Order, and remanded both these orders to the FCC for further consideration in accordance with the decision. In addition, on November 24, 1999, the FCC issued its Supplemental Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, (FCC 99-370) and on June 2, 2000, its Supplemental Order Clarification, (FCC 00-183), in CC Docket 96-98. The Parties further acknowledge that on April 27, 2001, the FCC released its Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, *In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-bound Traffic* (the "ISP Intercarrier Compensation Order") which was remanded in *WorldCom, Inc. v. FCC*, No. 01-1218 (D.C. Cir. 2002). By executing this Agreement and any Amendments to such Agreement and carrying out the rates, terms and conditions herein, SBC-13STATE does not waive any of its legal rights, and expressly reserves all of its rights, remedies and arguments, including but not limited to those related to any of the foregoing decisions or proceedings or any remands thereof, including its right to seek legal review or a stay pending appeal of such decisions and its rights under this Intervening